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Human rights obligations related to access to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Catarina de Albuquerque, in accordance with Human Rights Council resolution 12/8.

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Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque

Summary

The independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, submits the present report to the General Assembly in accordance with Human Rights Council resolution 12/8. In the report, the independent expert focuses on how human rights, in particular the human rights to water and sanitation, can make a contribution to the realization of the Millennium Development Goals, with a particular focus on target 7.C. She begins with a short summary of the history and defining attributes of the Millennium Development Goals and analyses their potential to help progressively realize economic, social and cultural rights. She continues by examining how human rights can address a number of gaps in the Millennium Development Goal framework relating to universal access, international cooperation and assistance, the formulation of targets and indicators and aligning them with human rights standards, non-discrimination and specific attention to the most marginalized and disadvantaged groups, participation, promoting intersectoral approaches and accountability. The final section of the report contains conclusions and recommendations.

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I. Introduction

1. The present report is submitted to the General Assembly by the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in accordance with Human Rights Council resolution 12/8. It examines how human rights, in particular the rights to water and sanitation, can make a contribution to the realization of the Millennium Development Goals, with a particular focus on target 7.C, as requested by the Human Rights Council in its resolution 7/22. It begins with a short summary of the history and defining attributes of the Millennium Development Goals. The report analyses the potential for the Millennium Development Goal framework to contribute to the progressive realization of economic, social and cultural rights. It also considers a number of gaps in the monitoring framework and the impact of human rights law in addressing these gaps. Finally, the report offers recommendations on how the human rights framework can help to strengthen development strategies based on the Millennium Development Goals, for the benefit of equitable and sustained poverty reduction efforts as well as increased legal and policy coherence at global and national levels.

2. From 21 to 24 September 2009, in New York, the independent expert organized several bilateral meetings and expert consultations on the Millennium Development Goals (in particular Goal 7) and the human rights to water and sanitation, with experts in human rights law, water, sanitation and development. She continued informal consultations with experts, development practitioners, States and civil society organizations through the beginning of 2010. The perspectives and expertise offered during these consultations were extremely helpful to the independent expert in drafting the present report. She is thankful to all those who shared their views with her.

II. History and promise of the Millennium Development Goals, including Goal 7

3. In the United Nations Millennium Declaration of September 2000,[1] leaders from 189 nations embraced a vision for the world in which developed and developing countries would work in partnership for the reduction of extreme poverty. To provide a framework for measuring progress, the poverty reduction commitments in section III of the Declaration were subsequently broken down into eight Millennium Development Goals, 18 targets and 48 indicators.[2] The Goals address many dimensions of poverty, such as income poverty, hunger, lack of education, disease and inadequate access to water and sanitation. They also place responsibility upon the international community to assist in areas including trade, aid and debt relief.

4. Brevity and simplicity are among the Millennium Development Goals' main virtues. The Goals were not intended as a complete development strategy and should be interpreted in the context of broader global commitments, including those relating to human rights, as noted in the Millennium Declaration. The Millennium Development Goals are no panacea by themselves: no set of targets can be achieved

[1] See General Assembly resolution 55/2.

[2] Later revised to include four new targets agreed to by member States at the 2005 World Summit (see General Assembly resolution 60/1), and relevant additional indicators.

in the absence of appropriate underlying institutions and public policies. While global goals are important for setting common benchmarks for progress, their application at the national level may require adaptation. Understood within these constraints, and contextualized and tailored in accordance with human rights standards and with national priorities and particularities, the Millennium Development Goals offer a framework for tracking human development progress, informing and monitoring public policy choices, identifying resource and capacity gaps and mobilizing needed financial flows, while contributing to the progressive realization of human rights.

5. Target 7.C commits the international community to "halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation". The indicator used is the "proportion of population using an improved drinking water source or improved sanitation facility, urban and rural". The term "improved" was not specified any further, but in practice is taken to refer to water sources or delivery points that, by nature of their construction and design, are likely to protect the water from outside contamination; and sanitation facilities that hygienically separate human excreta from human contact.[3] The WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation is the official United Nations mechanism tasked with monitoring progress towards the drinking water and sanitation target. The Joint Programme publishes estimates every two years on access to improved water sources and sanitation facilities worldwide, drawing data from household surveys and censuses.

6. While target 7.C itself is of critical importance, it is also indispensable for achieving the other Millennium Development Goals:

(a) Access to clean water and sanitation can reduce the risk of child mortality (Goal 4) by 50 per cent;[4]

(b) Clean water supply and sanitation services reduce diseases such as anaemia and vitamin deficiency that undermine maternal health (Goal 5);[5]

(c) Poor hygiene deriving from inadequate access to water and sanitation exposes people living with HIV/AIDS to increased risks of disease, and poor sanitation contributes to malaria which claims the lives of some 1.3 million people per year, 90 per cent of them children under the age of five (Goal 6);[6]

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[3] See *Indicators for Monitoring the Millennium Development Goals: Definitions, Rationale, Concepts and Sources* (United Nations publication, Sales No. E.03.XVIII.18), pp. 64-68; and WHO/UNICEF Joint Monitoring Programme, *Progress on Sanitation and Drinking-Water, 2010 Update* (available at www.wssinfo.org), p. 34. Examples of improved water sources include piped water into dwellings, plot or yard; public taps or standpipes, tube wells or boreholes; protected dug wells; protected springs and rainwater collection. Examples of improved sanitation facilities include flush or pour-flush sanitation facilities leading to piped sewer systems; septic tanks or pit latrines; ventilated improved pit latrines; pit latrines with slabs; and composting toilets.

[4] UNDP, *Human Development Report 2006: Beyond scarcity: power, poverty and the global water crisis* (2006), p. 23.

[5] Ibid

[6] Ibid.

(d) Water collection duties and lack of adequate or appropriate sanitation facilities keep girls out of school, and water-related diseases such as diarrhoea cost 443 million school days each year (Goal 2);[7]

(e) For many women and girls inadequate sanitation implies a loss of dignity and represents a source of insecurity. Water collection responsibilities and the time spent caring for relatives afflicted by water-related diseases diminish women's opportunity to engage in productive activities (Goal 3);[8]

(f) Looking beyond basic water supply for personal and domestic uses, the absence of clean water and sanitation is also a major cause of poverty and malnutrition, and water insecurity linked to climate change may increase the number of people suffering malnutrition by 75 million to 125 million by 2080 (Goals 1 and 7).[9]

7. The Millennium Development Goals can offer a valuable vehicle for the progressive realization of economic, social and cultural rights. However, the onset of the global financial and economic crises, on top of the global water, sanitation, food and climate crises, has put the resolution of the Goals at risk. The world appears on track to meet the water target, although there are significant problems when one goes beyond global aggregates and examines regional and in-country disparities. According to the latest estimates, 884 million people worldwide rely on unimproved water sources.[10] Of these, 84 per cent live in rural areas.[11] Sanitation is of greater concern still, as it is one of the least likely to be targets. Some 2.6 billion people worldwide are without improved sanitation and 1.2 billion people — mostly in rural areas — continue to practice open defecation.[12] If the current rate of progress is maintained, the sanitation target will be missed by 13 percentage points, meaning that, by 2015, 2.7 billion people will still be without access to improved sanitation.[13] And even if the targets are met, many people will still not have access to water and sanitation. Hence, efforts to realize access to both sanitation and water must be reinforced.

III. The contributions of human rights to the realization of the Millennium Development Goals, particularly Goal 7

8. There appears to be a widespread assumption in certain quarters that the Millennium Development Goals and human rights are, in effect, the same thing, and hence fulfilling the former effectively discharges any concern for the latter. One of the aims of the present report is to address this assumption, illustrating the important differences, as well as possible synergies between the Goals and human rights, and explaining why an explicit human rights focus is indispensable.

9. Notwithstanding widespread adherence to different international human rights treaties, human rights standards and principles have only selectively been integrated in national strategies to realize the Millennium Development Goals, including those

[7] Ibid., p. 22.
[8] Ibid., p. 23.
[9] Ibid., pp. 22 and 24.
[10] WHO/UNICEF Joint Monitoring Programme, note 3 above, p. 7.
[11] Ibid., p. 18.
[12] Ibid., pp. 6 and 22.
[13] Ibid., p. 8.

connected with target 7.C, and are virtually absent from global cooperation frameworks. There are a range of reasons for this disjuncture. The Millennium Development Goals project and international human rights law have very distinctive histories, and there are disciplinary differences and institutional fragmentation which are only now incrementally being bridged.

10. The explanations for the insufficient progress towards the realization of the Millennium Development Goals are both context-specific and complex. Human rights do not provide all of the answers. However, there are a number of important ways in which the human rights framework may help fill critical analytical and implementation gaps in Millennium Development Goal-based strategies. The international human rights framework must be seen as the baseline commitment on global efforts to meet the Goals.[14] While human rights embody legally binding obligations and need no instrumental justifications, there is increasing evidence that human rights-based approaches cannot only promote inclusive development processes, but also help to produce more equitable and sustainable development results. Enforceable socio-economic rights claims have been shown to have large-scale life-saving impacts.[15]

11. Within certain parameters, the Millennium Development Goals can be seen as complementing and contributing to national efforts to realize human rights. They might do this by bringing strengthened political commitment to the fulfilment of certain basic needs — including water and sanitation — protected under international human rights law, and by strengthening bilateral and multilateral partnerships within the framework of Goal 8, where needed. However, the Millennium Development Goal targets and indicators agreed at the global level reflect certain tensions and occasional inconsistencies with international human rights standards. Unless these problems are rectified, the result may be not only policy incoherence, but also Goal-based development strategies that may inadvertently violate international human rights standards.

A. The notion of progressive realization of universal access

12. The first question concerns the scale of ambition embodied in the Goals. The targets on access to water and sanitation are set at a 50 per cent reduction in the lack of access by the year 2015. But international human rights obligations do not stop at 50 per cent reduction or any other arbitrary benchmark. Whatever time period may prove realistic, international human rights law requires that States ultimately aim for universal coverage within time frames tailored to the country situation. Achieving the global Millennium Development Goal targets would undoubtedly represent a great success for many countries; but it is important to keep in mind that this would still leave 672 million people without access to water and 1.7 billion people without access to sanitation in 2015.[16] In that regard, some countries present notable

[14] See 2005 World Summit Outcome (General Assembly resolution 60/1), para. 126; Accra Agenda for Action (available from www.oecd.org), para. 13 (c).

[15] "Elements for an optional protocol to the International Covenant on Economic, Social and Cultural Rights: Analytical paper by the Chairperson-Rapporteur, Catarina de Albuquerque" (E/CN.4/2006/WG.23/2), paras. 61-66; Varun Gauri and Dan Brinks, eds., *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge: Cambridge University Press, 2008).

[16] WHO/UNICEF Joint Monitoring Programme, note 3 above, pp. 8-9.

examples. For instance, Bangladesh, Kenya and South Africa have set targets for access to water and sanitation that are higher than the global Millennium Development Goal targets, and Sri Lanka is aiming for universal access to water by 2025.[17]

13. The Millennium Development Goals are global targets to be achieved at the global level. The targets should not be applied uniformly at the country level in all cases. It is permissible and even necessary to tailor and contextualize the Goals to diverse national conditions and resource constraints. A 50 per cent reduction in the lack of access to water and sanitation may be ambitious in many countries, but relatively simple in others. Many countries should set targets beyond this benchmark to be achieved by 2015.

14. Human rights require that such national target-setting be undertaken with reference to an objective assessment of the national priorities and resource constraints within each country. This, in essence, is the meaning of the term "progressive realization", as enshrined in article 2(1) of the International Covenant on Economic, Social and Cultural Rights. States parties are under the obligation to progressively realize the rights to water and sanitation to the maximum of their available resources. States are required to move towards the goal of full realization as expeditiously and effectively as possible, within available resources and within the framework of international cooperation and assistance, where needed. This implies that all States — including those that have already reached the global Millennium Development Goal target — must continue to take steps to ensure the full realization of the human rights to sanitation and water. Reaching the Millennium Development Goal target must not be used as a justification for falling short of achieving universal access. In the process of achieving universal access, the Goals may provide relevant medium-term national benchmarks.

15. Progressive realization does not only require gradually increasing the number of people served with a view to achieving universal access, but also improving the levels of service. The Millennium Development Goal framework monitors whether or not people have access to an improved water source and sanitation facility, which does not capture all gradual improvements on the ground. For instance, public or shared sanitation facilities are not considered as progress towards the Goals, even if they are accessible without compromising security, well maintained and hygienic, while they could be seen as an intermediate step away from open defecation[18] in the progressive realization of human rights. At the same time, the Millennium Development Goal framework fails to provide incentives to go beyond the standard necessary to reach the Goals.[19] The progressive realization of human rights encompasses a more fluid concept requiring States to take constant steps towards fully ensuring human rights,[20] i.e. reaching a level of adequate access specified by criteria that will be further discussed below. Significantly, the full realization of the

[17] Centre on Housing Rights and Evictions, "The Significance of Human Rights in MDG-based Policy Making on Water and Sanitation: An Application to Kenya, South Africa, Ghana, Sri Lanka and Laos" (Geneva, 2009), pp. 5-7; Bangladesh, Poverty Reduction Strategy Paper, p. 168 ("The government expects to achieve the targets of safe water and sanitation for all by 2011 and 2010 respectively").

[18] Jamie Bartram, "Improving on haves and have nots", *Nature*, vol. 452, No. 20 (March 2008), p. 284

[19] Ibid., p. 283.

[20] Ibid., p. 284, calling for a sequence of benchmarks.

rights to water and sanitation reaches beyond the service level provided for by the Millennium Development Goals. Accordingly, States that have already met this level — even if universally — are still required to improve the standards achieved, for instance, by ensuring service provision within households.

16. It is challenging in many contexts to form definitive judgements about the extent to which States are meeting their obligations progressively to realize human rights. It is difficult to assess in quantitative terms whether a State is expending "the maximum of its available resources". However, there is an emerging body of research and practice in the field of quantitative assessments of human rights progress, going directly to the question of whether States are dedicating sufficient resources to the realization of their obligations. The human rights framework requires an examination of the fiscal and policy efforts undertaken for the realization of human rights, to assess whether these are sufficient under the given circumstances. Not only is an evidence-based assessment of this question important in its own right, but States which are able to demonstrate maximum effort may enjoy strengthened legal and moral claims for international assistance where national resources are lacking. Rights-based budget analysis has been explored quite extensively.[21] There are many other approaches, including the use of cross-country comparisons of national budget expenditure on various rights to support advocacy as well as reporting processes under the International Covenant on Economic, Social and Cultural Rights (see www.cesr.org). There are also more elaborate and data-intensive approaches using econometric analysis, costing exercises and modelling of affordability constraints.[22] Strengthened accountability can be pursued through composite indexes aiming to reveal comparative insights about the adequacy of Government efforts in fulfilling a limited bundle of socio-economic rights.[23] Such instruments can help to assess whether States are directing the maximum of available resources towards the progressive realization of the rights to sanitation and water for all.

17. National strategies and action plans, endorsed at the highest levels, are central to demonstrating the vision for ensuring full enjoyment of the rights to water and sanitation. The Human Rights Council has called for national and/or local plans of action "in order to address the lack of access to sanitation in a comprehensive way" with the "full, free and meaningful participation of local communities in the design, implementation and monitoring of such plans".[24] General Comment No. 15 of the Committee on Economic, Social and Cultural Rights identifies the adoption of a national strategy on safe drinking water as a priority and specifies certain characteristics this strategy should have (see E/C.12/2002/11, para. 47). National plans should be ambitious but realistic, integrated within national poverty reduction strategies and short- and medium-term expenditure frameworks, within a longer-

[21] For an overview of budget analysis and other tools for more effective monitoring of economic, social and cultural obligations, see E/2009/90.

[22] See, for example, Edward Anderson and Marta Foresti, "Assessing Compliance: the Challenge for Economic and Social Rights", *Journal of Human Rights Practice*, vol. 1, No. 3 (November 2009).

[23] Lawson-Remer, Terra et al., "An Index of Economic and Social Rights Fulfillment: Concept and Methodology", Working Paper (15 June 2009). See also Eitan Felner, "A New Frontier in Economic and Social Rights Advocacy? Turning Quantitative Data into a Tool for Human Rights Accountability", *International Journal of Human Rights*, vol. 9, No. 109 (December 2008).

[24] Human Rights Council resolution 12/8, para. 4. See also A/HRC/12/24, para. 81 (c).

term vision and strategy for universal access. These linkages will help to ensure that water and sanitation plans will not go the way of many well-meaning but ineffective national human rights planning exercises, but will actually be financed and operationalized.

B. International cooperation and assistance

18. Both the Millennium Development Goals and human rights foresee international cooperation in order to assist resource-constrained countries. Goal 8 contains a number of commitments on further developing the trading and financial system, increasing market access, enhancing debt relief, increasing official development assistance, improving access to essential drugs and encouraging technology transfer, taking into account, in particular, the needs of least developed countries, landlocked developing countries and small island developing States. Few Millennium Development Goals have attracted as much sustained criticism as Goal 8, however. Unlike other Goals, it provides little if any basis for accountability, in that it lacks time-bound targets. The human rights framework can make a difference in this regard.

19. While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.[25] There are a number of legal obligations associated with economic, social and cultural rights, including the rights to water and sanitation, which, subject to certain important qualifications, are to be discharged within the framework of international cooperation. States failing to meet their obligations by reason of legitimate resource constraints are required to call upon international assistance, and the international community has a responsibility to respond, whether bilaterally or collectively, through financial aid, technical assistance or other appropriate measures. The Human Rights Council has recognized the important role of international cooperation and assistance played by the United Nations, development and donor agencies, and stresses that more should be done to support States in their efforts to address the lack of access to sanitation. The Council has also urged development partners to adopt a human rights based approach when designing development programmes in support of national initiatives relating to sanitation (see Council resolution 12/8 (para. 6)). The logic of these recommendations applies equally to water.

20. The poor record of achievement for target 7.C reflects inadequate political prioritization by donor and partner countries alike, particularly in the case of sanitation. While aid for water and sanitation is increasing in absolute terms, the share of the water and sanitation sector has been declining relative to other

[25] See articles 1, 55 and 56 of the Charter of the United Nations, article 28 of the Universal Declaration of Human Rights articles 2 (1) and 11 (1) of the International Convention on Economic, Social and Cultural Rights, articles 4, 24 (4), 27 (4) and 28 (3) of the Convention on the Rights of the Child; article 32 of the Convention on the Rights of Persons with Disabilities, and more specifically General Comment No. 15 (E/C.12/2002/11), paras. 30-36.

sectors.[26] Moreover, aid is generally not well-targeted: only 42 per cent of aid for these sectors committed between 2006 and 2008 was addressed to least developed and other low-income countries.[27] The share of aid for basic sanitation and water services decreased from 27 per cent in 2003 to 16 per cent in 2008, much greater shares being directed at large systems, which generally do not reach the poorest segments of the population.[28] Strikingly, only about one third of aid to the water and sanitation sectors is directed to sanitation, even though far greater efforts are needed in this area.[29]

21. Unlike the situation in some other sectors, there is no platform to hold donor and partner countries accountable for their commitments. Aid coordination remains fragmented and incoherent.[30] The design of aid and cooperation policies should be guided by human rights standards. Moreover, there is a need for improved political prioritization, aid effectiveness and targeting of funding to where it is most needed. The "Sanitation and Water for All" initiative is a relatively new international partnership of national Governments, donors, civil society organizations and other partners working to address this challenge and galvanize political commitment to increase access to water and sanitation. This initiative provides capacity-building support for strong national processes with improved data and analysis on the sanitation and water supply sectors for decision-making, mutual accountability among aid agencies and partner Governments (and among Governments and their people) and better targeting and mobilization of funding. It aims to mobilize catalytic funding and provide specific technical assistance to the most off-track countries.[31] To meet this objective, donor commitments to support the implementation of actionable plans will be crucial.

C. Aligning targets and indicators with human rights

22. The normative content of the rights to water and sanitation can be determined in terms of the criteria of availability (referring to sufficient water for personal and domestic use, or sufficient sanitation facilities), quality (including safety), acceptability (including cultural acceptability), accessibility and affordability (see E/C.12/2002/11, para. 53, and A/HRC/12/24, paras. 69-80). The notion of progressive realization relates not only to progressively achieving universal access to water and sanitation, but also to meeting these standards. Human rights do not settle for minimum standards, such as basic access to water and sanitation, but ultimately require achieving a higher standard that guarantees an adequate standard of living.

23. The indicator for target 7.C is the proportion of the population having sustainable access to an improved water source. The definition of an improved water source is not specified in detail but refers mainly to specific types of water supply such as piped water or protected wells. With regard to sanitation, the indicator refers

[26] World Health Organization, "UN-Water global annual assessment of sanitation and drinking water 2010" (available at www.sanitationandwaterforall.org), p. 7.

[27] Ibid., p. 26.

[28] Ibid., pp. 7 and 30.

[29] Ibid., p. 28.

[30] UNDP note 4 above, p. 70.

[31] Sanitation and water for all fact sheet, available at www.sanitationandwaterforall.org/files/Publications%20and%20Resources/SWA_Fact_Sheet_English.pdf.

to "the percentage of the population with access to facilities that hygienically separate human excreta from human, animal and insect contact. [...] To be effective, facilities must be correctly constructed and properly maintained".[32]

24. In the first instance, human rights law requires that water and sanitation services be available. Water supply for each person must be sufficient for personal and domestic uses. In determining what is sufficient, human rights ultimately go beyond minimum targets such as 20 litres of water per person per day as referred to in the official guidance on the Millennium Development Goal indicators,[33] which is considered insufficient to ensure health and hygiene.[34] The Millennium Development Goal indicators do not explicitly refer to the availability of services, but use access to an improved water source as a proxy assuming that such sources are likely to provide a sufficient quantity of water.[35] For sanitation, availability is implicitly addressed in the indicator framework since shared facilities are not considered improved. However, from a human rights perspective, facilities such as those shared with neighbours (i.e., only a small number of people), which are accessible, safe, hygienic and well kept, may be acceptable.

25. Secondly, to meet human rights standards, water must be safe, that is, of such quality that it does not pose a threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing is essential. While target 7.C explicitly refers to access to safe drinking water, the indicator does not measure quality directly. It is based on the assumption that improved sources are likely to provide safe water. However, this is not always the case. The drinking water obtained from many improved sources is in fact unsafe,[36] with potentially adverse consequences for the health-related Millennium Development Goals as well as target 7.C. Simply putting a lid on the polluted water, which then counts as a protected well, does not mitigate all forms of pollution.[37] To include an assessment of actual drinking water safety in the Joint Monitoring Programme assessments, household survey data would need to be complemented by data derived from other approaches such as periodic water quality sample surveys using field-based techniques. This is already done in Bangladesh, where a serious contamination of the groundwater with arsenic made it mandatory to monitor water quality, since many "improved" water sources were severely contaminated.

26. With regard to sanitation, the safety criterion is implicit in the Millennium Development Goal indicator insofar as avoiding contact with excreta is concerned, but the indicator does not refer to water necessary for personal hygiene. Moreover,

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[32] *Indicators*, note 3 above, p. 66. The methodological assumptions and process for the Joint Monitoring Programme's coverage estimations are set out in "WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Policies and Procedures", Version 4 (April 2004).

[33] *Indicators*, note 3 above, p. 64, referring to the WHO/UNICEF "Global Water Supply and Sanitation Assessment Report" (2000), pp. 77-78.

[34] Guy Howard and Jamie Bartram, "Domestic Water Quantity, Service Level and Health", 2003, WHO document WHO/SDE/WSH/03.02, p. 22.

[35] *Indicators*, note 3 above, pp. 64-65.

[36] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 31; German Technical Cooperation, "MDG monitoring for urban water supply and sanitation: catching up with reality in Sub-Saharan Africa" (2007), pp. 7 and 14.

[37] Ibid., p. 13.

the indicator is silent on the question of safe disposal of excreta,[38] which in turn can affect water quality. Where the collection, treatment, disposal or re-use of excreta is not carried out with adequate care, leakage into groundwater, which is often a source of drinking water, may occur. Similarly, sewage from flush toilets that is not treated may end up in water used by downstream communities.[39] In such cases, leakage of sewage from "improved" sanitation facilities then results in polluting water sources which are nevertheless considered "improved" sources under the Millennium Development Goal framework.[40]

27. Thirdly, human rights require sanitation facilities, in particular, to be culturally acceptable. This will often require gender-specific facilities. Also, facilities will often have to be constructed in a way that ensures privacy and dignity. With regard to water, it must be of an acceptable colour, taste and odour. The Millennium Development Goal indicator fails to capture these aspects.

28. Fourthly, water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis. Physical security must not be threatened when accessing facilities. Again, the Millennium Development Goals indicator on water is used as a proxy,[41] on the assumption that "improved" sources are likely to be within the dwelling or a convenient distance from it. Accessibility could be measured more explicitly by using the time a round trip, including waiting time, takes. This could also serve as an indirect measurement of the amount of water people collect, as the distance to the water source has an impact on the quantity that can be collected. In fact, this is an indicator available from the surveys used by the Joint Monitoring Programme and has been reported on sporadically by the Joint Monitoring Programme as an additional criterion.[42] The independent expert considers that this should be done systematically, including examination of accessibility in schools, workplaces and other spheres of life.

29. Furthermore, regular supply is essential for continuous accessibility. This is not considered within the indicators, meaning that the impact of prolonged rationing or the drying up of wells during the hot season will not be picked up. To meet human rights standards with regard to accessibility, water supply must be predictable and must enable users to meet all needs over the day without compromising water quality.

30. Considerations of sanitation, accessibility and physical security when accessing facilities are addressed implicitly insofar as the Millennium Development Goal indicator excludes shared public toilets. Construction and maintenance are specifically contemplated, but apart from that, access is not further specified. Moreover, access must be ensured in a sustainable manner, which is provided for in the target but not necessarily captured by the indicators. People must not only "gain

[38] United Nations Secretary-General's Advisory Board on Water and Sanitation, "'Monitoring and Reporting' progress of access to water and sanitation" (15 April 2008 update, available from www.unsgab.org), p. 11.

[39] German Technical Cooperation, note 36 above, p. 26.

[40] For example, although Costa Rica has nearly met the Millennium Development Goal on sanitation with 98 per cent of the population having access to improved sanitation, the majority of wastewater goes untreated directly into rivers and other waterways (A/HRC/12/24/Add.1, paras. 37-39).

[41] *Indicators*, note 3 above, pp. 64-65.

[42] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 28.

access" momentarily towards the target date, but beyond, which requires, inter alia, providing for the management and financing of facilities.

31. Fifthly and finally, services must be affordable. Access to water and sanitation must not compromise the ability to pay for other essential needs guaranteed by human rights such as food, housing and health care. While the Millennium Declaration specifically mentioned reducing by half the proportion of people unable to reach or afford safe water (General Assembly resolution 55/2, para. 19), the notion of affordability was omitted from Goal 7. This suggests that, politically, States saw the significance of affordability for ensuring actual access to services, but could not undertake to monitor it because of the lack of data. Developing such data sets is crucial to monitor affordability levels and progress in that regard. The affordability criterion needs to be revived and prioritized in national Millennium Development Goal monitoring activities and future global initiatives.

32. The above reasoning suggests that the Millennium Development Goal indicators reflect human rights criteria to a certain extent, but that human rights can bring important dimensions to targets and indicators based upon the Millennium Development Goals, helping to refine and expand them. When these additional criteria are factored in, a much bleaker picture emerges. While the extent of the gap is unknown, far more people than indicated by the figures measuring access to improved water sources and sanitation facilities do not have access to sufficient water and sanitation services that are safe, acceptable, accessible and affordable. Assessments carried out by the United Nations Human Settlements Programme demonstrate this by explicitly considering regularity and affordability as additional criteria.[43] Another assessment highlights that access to safe water in urban areas is significantly lower in certain countries than the official figures for access to improved sources would suggest.[44] Likewise, pilot studies by the Joint Monitoring Programme indicate that far from all water sources that are categorized as improved meet water quality standards.[45]

33. The human rights criteria are required to ensure that access is factually guaranteed. For instance, physical "access" alone is not sufficient, when people cannot afford expensive water and sanitation services. The existence of toilets is not sufficient when women cannot use them because they are not sex-separated or do not guarantee privacy. In this way, human rights criteria offer a guide for the development of more specific and contextually appropriate indicators to ensure that human development objectives are achieved and sustained in practice.

34. One need not reinvent the wheel to address the above gaps. Problems of data availability are no doubt a critical constraint at present. But in methodological terms there is a significant body of practice to guide the identification of contextually appropriate targets, indicators and benchmarks to align Millennium Development Goal monitoring as closely as possible with applicable human rights standards. Among the many relevant initiatives, water and human rights experts have

[43] OHCHR, *Claiming the Millennium Development Goals: A Human Rights Approach* (2008), p. 39.

[44] German Technical Cooperation, note 36 above, p. 4.

[45] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 31.

elaborated a framework specifically for the development of right-to-water indicators.[46]

35. Accountability begins with reliable, relevant and adequate data. It is critical to supplement the data sources used by the Joint Monitoring Programme with additional data sets that relate specifically to human rights standards. Indicators should reflect the human rights criteria of availability, safety, acceptability, accessibility (including reliability) and affordability. Generating such additional data sets might be viewed as a considerable opportunity cost, to the extent that these funds could otherwise be dedicated to water or sanitation programmes directly. But in the view of the independent expert, the "opportunity" far outweighs the "cost", not only in terms of focusing interventions on key bottlenecks and informing policymaking in the water and sanitation sectors, but also the very substantial multiplier effects this would bring for health, education, gender equality, education, nutrition and related human rights and Millennium Development Goals.

D. Looking beyond averages: non-discrimination

36. Perhaps the most frequently voiced concern about the Millennium Development Goals is that, taken on their face, they may facilitate aggregate human development progress at the expense of the most marginalized populations, thereby potentially exacerbating underlying inequalities. In fact, it would be possible for a country to be in full compliance with the Goals regarding access to water and sanitation without having extended access to any person belonging to the lowest wealth quintile. Whereas the Millennium Declaration refers explicitly in paragraph 23 to "equitable access", this concern for equity is not reflected in the Millennium Development Goals and, regrettably, principles of equality and non-discrimination are at present poorly reflected in most Poverty Reduction Strategy Papers.[47] Non-discrimination and equality are not only instrumentally important in the context of development; they are binding human rights principles reflected in international human rights treaties. Development strategies based on the Millennium Development Goals that pick only the "low-hanging fruit" risk perpetuating and even reinforcing existing inequalities, frustrating sustainable development objectives and violating international human rights standards.

37. The global targets and indicators are generally formulated in terms of aggregate attainments. While the United Nations guidance on monitoring recommends gender as well as urban/rural disaggregation for all Millennium Development Goal indicators as far as possible, in practice the data are only disaggregated to a very limited extent. The indicators on water and sanitation are a notable exception.[48] But even this is no panacea, as the distinction is often more administrative than real, particularly in peri-urban areas, and studies have found that

[46] Centre on Housing Rights and Evictions, "Monitoring implementation of the right to water: a framework for developing indicators", Heinrich Böll Foundation, Global Issue Paper No. 14 (March 2005). See also HRI/MC/2008/3; and Indicators Benchmarks Scoping Assessment, available at http://ibsa.uni-mannheim.de/.

[47] Sakiko Fukuda-Parr, "Are the MDGs Priority in Development Strategies and Aid Programmes? Only Few Are!", International Poverty Centre Working Paper No. 48 (October 2008).

[48] See http://unstats.un.org/unsd/mdg/Data.aspx. A few other indicators have explicit provision for rural and urban or gender disaggregation, but the guidance from the United Nations on this question is not consistent.

in national surveys many urban slums are treated as rural areas.[49] In other instances, the population of informal settlements does not appear at all in the statistics.[50] The situation in urban slums, in particular, can therefore be assumed to be much bleaker than the official figures suggest.[51]

38. Moreover, international human rights instruments not only call for disaggregation between urban and rural areas, but also for assessments of discrimination on grounds of sex, race (including social, national and ethnic origin), disability and political and religious belief, among others. In terms of target 7.C specifically, groups that have been identified as potentially vulnerable or marginalized include women, children, inhabitants of rural and deprived urban areas as well as other poor people, nomadic and traveller communities, refugees, migrants, people belonging to ethnic or racial minorities, elderly people, indigenous groups, persons living with disabilities, people living in water-scarce regions and persons living with HIV/AIDS. Women and girls, in particular, benefit from improved access to water and sanitation as they are frequently responsible for ensuring the provision of water, often at personal risk of physical or sexual assault, and equally when forced to defecate in the open. The human rights framework helps to ensure that the most disadvantaged and marginalized groups are not overlooked in the quest for aggregate progress.

39. How much disaggregation of data is it reasonable to expect, insofar as Millennium Development Goal monitoring is concerned? Some countries have far greater statistical and analytical capacities than others. Data problems are especially acute regarding those living in informal settlements, internally displaced persons, certain ethnic minorities, migrants, persons with disabilities and other vulnerable and marginalized groups who may not be properly reflected in national censuses, administrative records and household surveys. Hence, there is an important capacity-building agenda around the question of national statistical and analytical capacities, without which the distributional impacts and severity of possible human rights harms cannot be anticipated and planned for.

40. Sadly, situations of systematic exclusion, deprivation and discrimination in relation to access to water and sanitation persist, even in many countries that are currently on track to achieve the Millennium Development Goals, as well as many middle-income and developed countries. The way the Goals are framed (almost exclusively being applied in developing countries) overlooks the problems of persistent pockets of poverty and marginalization in richer countries. In particular, a 50 per cent reduction is not nearly ambitious enough in many such contexts. Where countries have almost universal coverage, specific targets should be set to reach the groups that suffer from lack of access owing to discrimination and exclusion. In this regard, global targets must be translated into national and subnational targets and adapted to the specific context, given that regional, ethnic or income inequalities are often the driving force of such exclusion.

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[49] UN-Habitat, *State of the World's Cities 2006-2007: The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda* (2006); and German Technical Cooperation, note 36 above, p. 7.

[50] *The Challenge of Slums: Global Report on Human Settlements 2003* (UN-Habitat publication, Sales No. 04.III.Q.1), p. 14.

[51] German Technical Cooperation, note 36 above, p. 22.

41. A number of countries have made impressive strides in this direction. For example, the Government of Ecuador introduced a total of 96 indicators at national and local levels which help to capture discrimination against women, indigenous peoples and those of African descent.[52] A number of national Millennium Development Goal reports include analysis of the situation of indigenous people or minorities in the context of the water target (see A/HRC/4/9/Add.1, para. 65). Some countries have also disaggregated by region; for example, Thailand added specific targets for disadvantaged regions and Kenya required that all regions improve water and sanitation access by 10 per cent per annum.[53]

42. Further synergies between monitoring of the Millennium Development Goals and human rights monitoring will be critical for ensuring that development strategies based on the Goals are not targeted by default at the better-served populations for whom household data are more readily available (as distinct, for example, from informal settlements), thereby running the risk of entrenching existing inequalities. Strategies for the realization of access to water and sanitation should include targeted interventions, aiming at those who are most disadvantaged and harder to reach as a stepping stone towards universal service provision.

43. There are many useful and viable ways to bring non-discrimination and equity or distributional measures into monitoring. Greater attention is needed to disaggregate not only by reference to rural and urban areas, but also to the upper and lower wealth quintiles of the population. Disaggregation according to sex should be prioritized at the global level in view of the particular challenges, vulnerabilities and discrimination faced by women and girls. In addition to these types of disaggregation, relevant across all countries, a contextualized approach to disaggregation is required. States must identify groups that face discrimination (namely on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or any other status) and specifically monitor progress within these groups to be able to target systematic exclusion.

E. Participation and empowerment

44. The lack of adequate participation has been a troubling feature of many national poverty reduction planning processes, whether based on the Millennium Development Goals or not.[54] Participation has sometimes been reduced to the involvement of user groups in delivery of water and sanitation,[55] or has been dominated by a few well-established non-governmental organizations. A reductionist, tokenistic and technocratic understanding of participation might lighten the State's load in the short run, but will rarely, if ever, be sufficient to genuinely empower people in connection with the decision-making processes that affect their lives.

45. A defining attribute of the human rights framework is its potential to empower people, to challenge existing inequities and to transform power relations to bring about real and sustainable changes, particularly for those most marginalized, with

[52] OHCHR, note 43 above, p. 10.

[53] Malcolm Langford, "Taking rights seriously: six ways to fix the MDGs" (2009), p. 3.

[54] Sakiko Fukuda-Parr, note 47 above, p.14.

[55] Centre on Housing Rights and Evictions, note 17 above, p. 6.

strengthened accountability. Human rights standards compel the participatory formulation of public policies and development plans and the institutionalization of democratic processes. All people have the right to participate in decision-making processes that may affect their rights, and the Committee on Economic, Social and Cultural Rights affirms in its General Comment No. 15 that all people should be given full and equal access to information concerning water, sanitation and the environment (E/C.12/2002/11, paras. 12 (4), 48 and 55).

46. In order to give full meaning and practical expression to "participation," it is vital for States to transcend ad hoc and project-level participatory processes, and seek to encourage a more fundamental and sustainable culture of participation and transparency. Active, free and meaningful participation should be internalized within democratic institutions and political culture. Human rights are, of course, ends in themselves; however, studies have also shown the vital importance of transparency and freedom of information in reducing corruption in the delivery of basic services.[56]

47. There are many well-known barriers to institutionalizing participatory practices, particularly insofar as the poorest and most excluded individuals and communities are concerned. Formal "democratic" guarantees and periodic free elections do not of themselves prevent the capture of governing institutions and decision-making processes by elite groups. Budgetary and programme delivery deadlines, electoral promises and disbursement incentives often crowd out meaningful participation requirements in practice. Analysis of the political, economic, cultural and social causes of exclusion is required as part of any serious effort to promote genuinely participatory processes, including a focus on literacy levels, language constraints, cultural barriers and physical obstacles.

48. Certain countries have made important strides towards introducing participation in the water and sanitation sectors at the national level. For example, Ghana's 2007 national water policy aims to ensure participation at the lowest appropriate level of society in water-related issues and calls for the acceleration of women's representation at all levels and in all spheres of water-related management. South Africa's legislative and policy framework is based explicitly on constitutionally protected human rights to water and sanitation, and the Department of Water Affairs and Forestry issued generic public participation guidelines for use by water service authorities to ensure adequate participation in service delivery.[57] Nevertheless, the main challenge is to more fully translate laws and policies into practice.

F. Intersectoral approaches and addressing root causes

49. Among the defining attributes of human rights is their indivisible, interrelated and interdependent nature.[58] The human rights to water and sanitation are intimately linked to the rights to health, housing, education and political participation, among

[56] Daniel Kaufmann, "Human rights and governance: the empirical challenge", in *Human Rights and Development: Towards Mutual Reinforcement* (Philip Alston and Mary Robinson eds.) (Oxford, Oxford University Press, 2005).

[57] These and other experiences are documented in Centre on Housing Rights and Evictions, note 17 above.

[58] Vienna Declaration and Programme of Action (A/CONF.157/24 (Part I), chap. III), para. 5.

others (E/C.12/2002/11, para. 3, and A/HRC/12/24), as well as the right to life and the prohibition of cruel, inhuman or degrading treatment or punishment in extreme cases.[59]

50. Lack of access to water and sanitation is not simply a question of scarcity of technology, financial resources and infrastructure. It is a matter of setting priorities, a function of societal power relations and a problem of poverty and deeply entrenched inequalities. In order to increase sustainable access to water and sanitation, it is essential to address these underlying causes. Rights-based analyses in the water and sanitation sectors have revealed, for example, lack of secure land tenure as a key blockage,[60] in particular in urban slums. Target 7.D aims to achieve, by 2020, a significant improvement in the lives of at least 100 million slum-dwellers. The target date (five years later than the rest of the targets) and the scale of progress aimed for (around a tenth of the estimated 1 billion slum-dwellers) highlight the low ambition embodied in this target.[61] The indicators used as a proxy to measure progress towards the target do not capture security of tenure, which would be crucial to improve living conditions[62] and is one of the main components of the right to housing.[63] If these underlying issues were addressed and the target on slums were set higher, it would contribute significantly to making progress towards universal access to water and sanitation.

51. The indivisibility and interrelatedness principles strengthen the case for collaborative, intersectoral responses to problems concerning access to water and sanitation. The human rights framework requires that States plan over time towards the ultimate goal of universal water and sanitation coverage. This raises potentially difficult trade-offs in the short run, given the relatively high unit costs of getting to the "hardest to reach". However, these decisions should not be taken in isolation: a rigorous and informed rights-based situational analysis should reveal critical intersectoral linkages necessary for effective collaborative actions and sustained progress towards universal coverage. Whatever the financial and other difficulties involved in reaching the most excluded, there must at least be immediate planning in that direction, through "concrete, targeted and effective" steps.

52. Social protection policies can be expected to feature prominently in an intersectoral, rights-based analysis of the water and sanitation sectors. There have been strengthened calls for "social protection floors" and numerous cases of successful implementation with impressive poverty reduction impacts.[64] While social policy priorities are of course country-specific, the "social protection floor" concept includes water and sanitation within the scope of essential services, along with a set of social transfers to provide a minimum income and livelihood security to ensure continuing access to essential services for the poorest.[65] In practice,

[59] See CCPR/C/HND/CO/1, para. 15, and A/56/44, paras. 181 and 183.

[60] Centre on Housing Rights and Evictions, note 17 above, p. 5.

[61] OHCHR, note 43 above, p. 40.

[62] Ibid.

[63] Committee on Economic, Social and Cultural Rights, General Comment No. 4 (E/1992/23, annex III), para. 8.

[64] United Nations Chief Executives Board for Coordination, "The global financial crisis and its impact on the work of the UN system" (CEB/2009/HLCP-XVII/CRP.1 and Add.1).

[65] International Labour Office/World Health Organization, "The Social Protection Floor, A joint Crisis Initiative of the UN Chief Executives Board for Coordination on the Social Protection Floor" (Geneva, October 2009), p. 2.

however, these minimum packages of affordable social protection guarantees do not frequently appear to have prioritized water or sanitation, as distinct from basic health, nutrition, education and income security objectives. The fundamental importance of water and sanitation, in their own right and also for the realization of health, food, education and other Millennium Development Goals and their corresponding human rights, establishes a strong case for increasing priority attention to water and sanitation. Such an integrated and intersectoral analysis within a broader social protection framework offers a compelling and potentially important means of addressing affordability constraints.

G. Strengthening accountability at national and global levels

53. The Millennium Development Goals help to promote accountability at national and global levels through monitoring and reporting against internationally agreed as well as nationally tailored targets. They draw upon widely available socio-economic statistics to monitor progress towards a realistic number of quantifiable targets. In this regard, they can provide a valuable complement to more traditional human rights monitoring tools and techniques, bringing human development data and quantitative assessment methods to human rights monitoring and hence helping to give a more complete picture of countries' progress — in absolute as well as comparative terms — towards the fulfilment of certain socio-economic rights.

54. However, international human rights commitments constitute prerequisites for the realization of the Goals, providing a wider set of complementary standards and mechanisms for accountability. Human rights monitoring institutions and expert bodies add important additional accountability dimensions to monitoring and reporting processes. These include courts, national human rights institutions and informal justice systems, as well as international mechanisms including the treaty bodies and special procedures. As emphasized earlier, the fact that human rights entitlements apply to all people everywhere — in richer, as well as poorer countries — fills an important gap in the Millennium Development Goals framework.

55. Under international human rights law, States are obliged to put in place mechanisms for accessible, affordable, timely and effective remedies for any breaches of economic, social or cultural rights. These requirements convey a different idea about accountability than that embodied in the Millennium Development Goals framework. The consequences for the non-realization of the Goals and the incentives for better performance are determined largely in the court of public opinion on the basis of the content of periodic reporting processes. This is not to be discounted: in countries with democratic and responsive governing institutions and a free and pluralistic media, a relatively poor scorecard — particularly when contrasted with countries with comparable per capita GDP — may provide welcome stimulus for improved performance. However, human rights standards and monitoring bodies go further by assessing compliance with specific legal obligations for the realization of human rights as well as responsibilities for violations, including with respect to discrimination, exclusion and unjustifiable retrogression.

56. National accountability mechanisms are naturally the most familiar with the needs of the poorest communities, although in some countries and contexts, they

may not be the most responsive institutions. The role of the judiciary and public interest litigation deserve highlighting as courts worldwide are increasingly dealing effectively with economic, social and cultural rights claims. Public interest litigation can be linked to development strategies based on the Millennium Development Goals. For example, UNDP Turkey recently initiated a project called "Linking the MDGs to Human Rights" involving the production of a toolkit for city councils. The aim is to provide guidance on claiming rights and monitoring progress towards the Goals at the local level. The project explored the potential for public interest litigation in administrative courts to remedy human rights violations associated with inadequate progress, avoidable retrogression or discrimination in connection with efforts to realize the Goals.[66]

57. The enforcement of human rights claims can have preventive as well as reactive or corrective impacts and, through a range of feedback channels, exert enduring influence on legislative reform and policymaking. Recent empirical research in Brazil, India, Indonesia, Nigeria and South Africa has found that "legalizing demand for socio-economic rights might well have averted tens of thousands of deaths in the countries studied ... and has likely enriched the lives of millions of others".[67] Litigation of course has its limitations and risks, and we are still learning about the preconditions for effective claims in any given context.[68] Nevertheless, the role of human rights adjudication should be accorded a more explicit and prominent place in strategies to strengthen accountability.

58. National mechanisms should be seen in the context of their interactions with regional and international human rights bodies and instruments. In particular, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 63/117, annex) will likely generate a wealth of case law that will in turn promote adjudication at the national and regional levels and influence judicial and quasi-judicial case law.

59. Apart from judicial and quasi-judicial mechanisms, there is a broad range of administrative, political and social mechanisms and processes to strengthen accountability and incentives for the realization of the Millennium Development Goals and related human rights, including public expenditure reviews, participatory social audits, community scorecards, impact assessments of public policies, budget transparency initiatives and "legal empowerment" initiatives, among many others. There are many institutions with roles to play, from parliamentary review committees and oversight mechanisms to executive and administrative agencies, line ministries, national audit offices and local government bodies. Water and sanitation regulatory bodies, in particular, can play a significant role, when endowed with the power to monitor and enforce service standards, tariffs and regulations in line with human rights standards (see A/HRC/15/31, para. 52). Ombudsmen and national

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[66] Malcolm Langford, "Human rights and MDGs in practice: a review of country strategies and reporting" (2008), p. 30.

[67] Daniel Brinks and Varun Gauri, "A new policy landscape: legalizing social and economic rights in the developing world", in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, Varun Gauri and Daniel Brinks, eds. (Cambridge: Cambridge University Press, 2008).

[68] See *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Malcolm Langford, ed. (Cambridge University Press, 2009); and Gauri and Brinks eds., note 67 above.

human rights institutions, civil society organizations, community organizers and alternative law groups also have the potential to help strengthen accountability.

60. Among many other suitable mechanisms, human rights impact assessments should be conducted more systematically in all fields of public policymaking, before, as well as during and following implementation. While there is no template for a human rights impact assessment, the principal elements should include (a) incorporating the human rights to water and sanitation in the explicit subject of the assessment; (b) identifying indicators for the assessment that are consistent with relevant international human rights standards; (c) focusing on people who are most excluded and marginalized along with responsible actors; (d) striving to ensure that the assessment, as far as possible, contributes to building the capacities of relevant national stakeholders; (e) ensuring that the process of carrying out the assessment respects human rights principles such as participation, non-discrimination, transparency and accountability; and (f) seeking to involve human rights mechanisms.[69]

IV. Conclusions and recommendations

61. The Millennium Development Goals have served a valuable function in galvanizing international support around a certain number of monitorable poverty reduction targets, including with respect to water and sanitation. The water and sanitation targets are vital human development ends, and they are also indispensable for the achievement of the other Millennium Development Goals.

62. With these factors in mind, there is potential for the Millennium Development Goals and human rights to be seen as consistent and mutually reinforcing. Subject to necessary contextualization, the Goal targets can furnish appropriate benchmarks for monitoring an important subset of economic, social and cultural rights at the national level. Yet, the potential for constructive synergy has not materialized to any great extent in practice. Neither water nor sanitation, in particular, has yet been accorded the priority that is objectively warranted, if progress towards these and other closely related Millennium Development Goals is to be escalated and sustained. The present report has highlighted several areas where the human rights to water and sanitation can be integrated within national Millennium Development Goal monitoring and planning processes, as well as global goal-setting and target-setting processes, in order to redress some of the shortcomings and promote both legal and policy coherence.

63. In line with these conclusions, the independent expert recommends the following:

(a) States are encouraged to adapt, tailor and contextualize Millennium Development Goals at the national level, in a way that ensures respect for human rights, on the basis of an objective assessment of national priorities and resource constraints. States must take deliberate, concrete and targeted steps to progressively realize the rights to water and sanitation and corresponding

[69] See Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements* (Intersentia, 2009).

development targets as expeditiously and effectively as possible. Ultimately, they must aim for universal access in line with human rights standards;

(b) States must have a vision of how to fully realize the rights to water and sanitation for all, and elaborate national strategies and action plans to implement this vision. These should be endorsed at the highest political level and integrated within national poverty reduction strategies and expenditure frameworks to ensure their operationalization, sustainability and comprehensiveness;

(c) Sanitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments;

(d) States must eliminate discrimination, inequalities and systematic exclusion. They must detect their underlying structural causes, inter alia by developing disaggregated data for access to water and sanitation, to target the most marginalized and vulnerable;

(e) Development cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation and human rights obligations regarding non-discrimination, ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights;

(f) Official development assistance for the water and sanitation sector must be better targeted to primarily reach those most in need, including in least developed and other low-income countries as well as the most marginalized communities and populations in other countries. As those most in need tend to benefit from basic systems, priority should be given to these. Moreover, since sanitation continues to be underfunded, and more off track than the water target, the former must be prioritized in aid targeting;

(g) The formulation of new or revised global goals, targets and indicators and their adaptation at the national level must be guided by human rights standards and principles, including the normative content of the rights to water and sanitation, as well as non-discrimination, participation and accountability. In particular, future indicators must reflect the criteria of availability, safety, acceptability, accessibility (including reliability) and affordability in line with human rights standards;

(h) Data collection at the global level and human rights-based monitoring must disaggregate progress according to different grounds of discrimination. Gender and wealth quintiles must be prioritized for that purpose. In addition, a contextualized approach to disaggregation is required. States must identify groups and individuals under their jurisdiction who face discrimination and specifically monitor progress in improving their access to sanitation and water;

(i) The Joint Monitoring Programme should serve as a global discussion platform to facilitate the formulation of possible next-generation global water, sanitation and hygiene targets, corresponding indicators and adequate data-collection mechanisms. It would be well positioned to compile experiences on the measurability of additional indicators, commission research into these

issues where needed and disseminate experiences. To meet this task, it will require adequate resourcing;

(j) Near-universal access to water and sanitation cannot be cause for complacency and States must not overlook persistent pockets of poverty, but instead continue to focus on addressing systematic discrimination and exclusion;

(k) States and other relevant actors must promote genuinely participatory processes and empower people to actively take part in decision-making processes, including on the use of development assistance, inter alia by overcoming barriers including low literacy levels, language constraints, cultural barriers and physical obstacles. To enable meaningful participation, full transparency must be ensured. All people must have full and equal access to information concerning water and sanitation and related plans, policies and programmes, including the use of development assistance;

(l) States and other relevant actors must address water and sanitation in a comprehensive manner, including the underlying causes of lack of access. For that purpose intersectoral approaches are crucial, including the integration of sanitation and water into social protection initiatives;

(m) States must put into place accessible, affordable, timely and effective accountability mechanisms. Judicial and other accountability mechanisms must be made available to all to strengthen accountability for the realization of the Millennium Development Goals. Human rights impact assessments must be carried out more systematically;

(n) States are particularly encouraged to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.